

What Contractors Should Know About New York's Statewide Pay Transparency Law

By W. Eric Baisden, Adam Primm and Christopher W. Pendleton*

In this article, the authors review the requirements of the new statewide pay transparency law enacted recently in New York State.

New York Governor Kathy Hochul has signed legislation establishing a statewide pay transparency law in New York State.

The new law, S.9427-A/A.10477,¹ requires employers to list salary ranges for all advertised jobs and promotions in the state. The signing of this legislation comes on the heels of a substantively identical law that recently went into effect in New York City. As with the New York City law, the statewide requirement is part of a broader push toward improving pay transparency.

REQUIREMENTS

The New York State law takes effect 270 days after Gov. Hochul's signature, i.e., September 17, 2023. It specifically prohibits employers from advertising a job, promotion or transfer opportunity without stating:

- The compensation or range of compensation for the job, promotion or transfer opportunity; and
- The job description for the job, promotion or transfer opportunity, if one exists.

If the job is paid solely on commission, the advertisement must disclose a general statement that "compensation shall be based on commission." The law defines "range of compensation" to mean the minimum and maximum annual salary or hourly wage for a job, promotion or transfer opportunity that the employer, in good faith, believes to be accurate at the time of the posting for such opportunity.

Like the New York City law, the statewide legislation will apply to employers with four or more employees. The four employees do not need to work in the same location, and they

*W. Eric Baisden is co-chair of the Labor & Employment Practice Group at Benesch, Friedlander, Coplan & Aronoff LLP. Adam Primm, a partner in the firm, has a labor and employment practice that includes representing public and private sector employers in all areas of employment and labor relations, as well as related employment litigation before federal and state administrative agencies and in trial courts in over 20 states. Christopher W. Pendleton, an associate at the firm, concentrates his practice on the representation of businesses and individuals in a wide range of labor and employment matters. The authors may be contacted at ebaisden@beneschlaw.com, aprimm@beneschlaw.com and cpendleton@beneschlaw.com, respectively.

do not need to all work in New York. As long as one of the employees works in New York or the employer is seeking to hire an employee that will be located in New York (even on a part-time basis or working remotely from the employee's home in New York), the employer is covered by the new law and must comply with it for any advertisement concerning a New York-based position.

RECORDS

The law also requires covered employers to maintain records necessary to comply with the law, such as a history of compensation ranges

for the listed job, promotion or transfer opportunity, along with any existing job descriptions for the same. For the avoidance of doubt, covered employers are not required include other forms of compensation or benefits—such as health insurance, paid time off, overtime pay, bonus opportunity, or the availability of a 401(k) plan—in the job posting.

NOTES:

¹ <https://legislation.nysenate.gov/pdf/bills/2021/S9427A>; <https://legislation.nysenate.gov/pdf/bills/2021/A10477>.